

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA - NEW ALBANY**

IN THE MATTER OF:	. Case #10-93904-BHL-11
	.
EASTERN LIVESTOCK CO., LLC	. New Albany, Indiana
	. January 12, 2011
Debtor	. 10:37:39 a.m.

TRANSCRIPT OF TELEPHONIC HEARINGS RE:
(#60) MOTION TO ABANDON, IN ADDITION TO MOTION FOR RELIEF FROM STAY AND REFUSAL TO WAIVE 30-DAY PRELIMINARY AND 60-DAY FINAL HEARING TIME REQUIREMENT, FILED BY CREDITOR REPUBLIC BANK & TRUST COMPANY; (#161) OBJECTION BY TRUSTEE JAMES A. KNAUER; (#60) MOTION TO ABANDON, IN ADDITION TO MOTION FOR RELIEF FROM STAY AND REFUSAL TO WAIVE 30-DAY PRELIMINARY AND 60-DAY FINAL HEARING TIME REQUIREMENT, FILED BY CREDITORS J&F OKLAHOMA HOLDINGS, INC., CACTUS GROWERS, INC., AND FRIONA INDUSTRIES, LP; (#149 - #163) OBJECTIONS BY CREDITOR FIRST BANK & TRUST COMPANY AND (#162) BY TRUSTEE JAMES A. KNAUER; (#141) EMERGENCY MOTION FOR AUTHORITY EMERGENCY MOTION REGARDING PAYMENTS ON DEBTOR'S CATTLE SALES, FILED BY TRUSTEE JAMES A. KNAUER; (#177) OBJECTIONS BY CREDITORS CACTUS GROWERS, INC., FRIONA INDUSTRIES, LP, AND J&F OKLAHOMA HOLDINGS, INC.;
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BEFORE THE HONORABLE BASIL H. LORCH, III, J.U.S.B.C.

APPEARANCES: (See Next Page)

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CAPTION - continued

**(#143) EMERGENCY MOTION FOR AUTHORITY EMERGENCY MOTION
REGARDING TRUSTEE SELLING DEBTOR'S CURRENT CATTLE INVENTORY,
FILED BY TRUSTEE JAMES A. KNAUER;
(#176) OBJECTION THERETO FILED BY CREDITORS CACTUS GROWERS, INC.,
FRIONA INDUSTRIES, LP, AND J&F OKLAHOMA HOLDINGS, INC.;
(#174 & #198) RESPONSES IN SUPPORT OF MOTION FOR RELIEF FROM STAY,
FILED BY CREDITOR CPC LIVESTOCK, LLC, AND CREDITOR EDDIE EICKE
BEFORE THE HONORABLE BASIL H. LORCH, III, J.U.S.B.C.**

APPEARANCES:

For Petitioning Creditors, Moseley Cattle
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1 (At 10:37:39 a.m.)

2 THE COURT: Good morning. Be seated.

3 ATTORNEYS: Good morning, Your Honor.

4 THE COURT: All right, we're on the record in
5 Eastern Livestock Company, LLC. It's my understanding that
6 the Courtroom Deputy has already gotten all the appearances of
7 record. I'm not going to go through those all again. I would
8 just ask that when you do speak that you identify yourself and
9 who you're representing.

10 There are several matters on the docket this
11 morning. The first motion that I have is a motion to abandon,
12 and for relief, filed by Mr. Morris on behalf of Republic
13 Bank.

14 MR. MORRIS: Yes, Your Honor. That's my motion.
15 We have an agreement, Your Honor. There was an objection
16 filed by the Trustee, and we've reached an agreement, and,
17 Your Honor, the stay will be terminated. The Trustee will
18 remain in possession of the property without rent for six
19 months from the -- from today's date.

20 They will -- Republic will maintain the right, upon
21 reasonable notice, to inspect the premises. The Trustee will
22 maintain insurance on both the contents and the building, and
23 will pay utilities for the building during that six-month
24 period. A foreclosure action will be filed in Floyd State --
25 or Floyd County State Court, and the Trustee will be named;

1 and if the proceeds of the Sheriff's Sale exceed the claim of
2 Republic, those proceeds will be turned over to the Trustee
3 following the Sheriff's Sale.

4 I believe that's our agreement.

5 MS. HALL: That's correct, Your Honor.

6 THE COURT: All right.

7 MR. MORRIS: We'll submit an order within ten days,
8 Your Honor, with the Court's permission.

9 THE COURT: Very good. Thank you.

10 MR. MORRIS: Permission to depart, Your Honor.

11 THE COURT: Well, I wish I could go with you.

12 MR. MORRIS: Well, I'll buy lunch, Judge.

13 THE COURT: All right. It's my understanding now
14 that I've already made a mistake --

15 CLERK: (unclear) appearances.

16 THE COURT: They have not made appearances.

17 CLERK: They have not --

18 THE COURT: All right. I thought everyone had done
19 appearances. Apparently only the attorneys on the phone have
20 done appearances, so let's state the appearances in the
21 courtroom, and you can start, Mr. Morris, since you're
22 leaving.

23 MR. MORRIS: Allen Morris on behalf of Republic
24 Bank, Your Honor. I'm accompanied by Jerry Brockman
25 (phonetic), Assistant Vice-President.

1 THE COURT: All right. Thank you.

2 MS. HALL: Terry Hall on behalf of the Trustee in
3 the debtor's case, Jim Knauer; and Jim Knauer is with me, as
4 well as Elizabeth Lynch, who is -- was the prior Receiver and
5 has been proposed to be a consultant to the Trustee.

6 MR. WHARTON: Chuck Wharton for the United States
7 Trustee.

8 MR. KING: Good morning, Your Honor. Ted King for
9 Fifth Third Bank.

10 MR. CLEMENT: Brett Clement and John Carr, III, for
11 the First Bank & Trust Company.

12 MR. DONNELLON: Good morning, Your Honor. Dan
13 Donnelon, and with me is Steve Weigand. We are also for First
14 Bank.

15 MR. AMES: Judge, John Ames and Chip Bowles from
16 Greenebaum, Doll & McDonald. We representing the original
17 petitioning creditors, involuntary, as well as Superior
18 Livestock currently, Ike's Trucking, Glenn Franklin -- there
19 will probably be a couple more we'll submit to the Court a
20 2019 when we feel we have our arms around how many folks we'll
21 be representing.

22 MR. LeBAS: David LeBas for J&F Oklahoma Holdings,
23 Inc., one of the moving parties on the motion to lift stay
24 concerning an interpleader matter this morning.

25 MR. LOVELL: John Lovell on behalf of Cactus

1 Growers, another movant on the lift stay.

2 MR. MASSOUH: John Massouh on behalf of Friona
3 Industries.

4 MR. HUFFAKER: John Huffaker for Fiona Industries,
5 Cattlemen's Live -- Cattlemen's Feed Lot (unclear).

6 MR. ROBINSON: Mark Robinson, local counsel with
7 Mr. Massouh, Mr. Lovell, and Mr. LeBas.

8 MS. PRY: Kathryn Pry, Trustee for the Gibson
9 estate.

10 THE COURT: All right. The next matter I have is
11 the motion for relief from stay filed by Mr. Robinson on
12 behalf of J&F Oklahoma Holdings, Cactus Growers, Inc., Friona
13 Industries, with objections filed by creditor, First Bank &
14 Trust, and the Trustee.

15 CONFERENCE TELEPHONE OPERATOR: Joining the
16 meeting.

17 THE COURT: Are you ready to proceed on that
18 motion?

19 MR. ROBINSON: The movants are ready, Your Honor.

20 THE COURT: All right, come forward --

21 MR. LeBAS: We're going to need a little space to
22 (unclear)

23 THE COURT: Mr. King, can we maybe give them that
24 table?

25 MR. KING: That would be fine, Your Honor.

1 THE COURT: If they need another -- how many chairs
2 are you all going to need?

3 MR. LeBAS: Probably four.

4 THE COURT: Scoot up a couple of those chairs
5 there.

6 (Pause to 10:45:48 a.m.)

7 MR. LeBAS: If Your Honor is ready.

8 THE COURT: I'm ready.

9 MR. LeBAS: All right.

10 THE COURT: Why don't you make an opening
11 statement. I've read the briefs and the objections and the
12 motion, and --

13 MR. LeBAS: I think that might be helpful, Your
14 Honor. In view of that, what we have prepared -- and this
15 would be actually one of the exhibits books -- I think it
16 might be helpful for the Court -- it's the one that had the
17 round logo on the front, that's the joint exhibit book?

18 THE COURT: Mhmm.

19 MR. LeBAS: What we're calling that. The last tab
20 to that document is a flow chart that I would refer the Court
21 and counsel to in connection with the opening remarks I'm
22 going to deliver.

23 THE COURT: All right.

24 MR. LeBAS: And what I'd like to begin with is a
25 very brief summary of what we see what Eastern Livestock's

1 business was and how that business was connected to the
2 business of the feed growers.

3 MR. LeBAS: Eastern Livestock during its
4 operations, the pleadings have suggested, was a very large
5 order company that bought and sold cattle, and it did so in
6 two primary ways of doing business, one of which involved
7 purchasing on order for another, is called an "order-buying
8 business."

9 As time developed we believe that part of its
10 business became a much smaller part of what it did. And the
11 other aspect of its business in which it bought and sold
12 cattle for its own account, hoping to sell them for more than
13 what it paid for them, was the larger part of its business.
14 And the folks that -- the movants in this case had
15 arrangements with Eastern, which were in that second category:
16 That is, buying cattle from Eastern that Eastern had purchased
17 from third parties.

18 And this flow chart is intended to illustrate how
19 that process worked and who the parties were. There's one for
20 each of the interpleader parties: The one on top for mine is
21 -- let's see, who's this for?

22 THE COURT: I have Friona.

23 MR. LeBAS: This one is for Friona. All of these
24 are similar. The dollars are different because the parties
25 have somewhat different amounts that were interplead -- pled

1 into the Texas case. But generally, what would happen is,
2 just starting from right to left, sellers, ranchers, auctions,
3 so forth, would sell cattle to Eastern. Eastern then
4 contracted at various times to sell cattle to the feed yards.
5 The feed yards would pay Eastern. And when the crisis hit,
6 the feed yards were in possession of cattle that were in the
7 process of payment, some of which had not been paid for yet
8 because the checks hadn't been processed; others of which
9 checks had been issued but were in a stage that provisional
10 credit could be pulled back.

11 And so both of those situations occurred in the
12 funds that developed from those two situations were then held
13 for some time, as some efforts were made to try to figure out
14 what to do, ultimately resulting in an interpleader case with
15 a joinder by the three parties: Friona, then Cactus, then
16 J&F Oklahoma -- which was completed and filed and funds
17 actually deposited in the Amarillo Court, approximately
18 \$6,700,000, shortly before the involuntary bankruptcy was
19 filed.

20 Both before and after the involuntary bankruptcy was
21 filed, many of the parties who were named as the interpleader
22 claimants appeared in the case, and as of today there will be
23 some parties who will make announcements in support of our
24 motion. We're not aware of parties who are opposed to the
25 motion, other than the two parties that had filed: First

1 Bank & Trust, which we understand is a creditor of the
2 Gibsons, not Eastern Livestock -- and the Trustee.

3 I don't know that the parties who were -- all of the
4 parties who are named here -- but after I'll stop my opening
5 I'll ask those parties who I think are on the phone here to
6 make known what their position is.

7 As we understand it, legal argument relates to two
8 points, and the first is whether the interpleader action
9 should proceed as its own process or should come into this
10 Court in -- for resolution; and if the Court makes that
11 decision that it should come to this Court for resolution,
12 then there are two subsidiary issues: Should the stay be
13 lifted for cause under (d)(2) -- 362(d)(2), which is our
14 primary argument: That is, no equity, and not necessary for
15 organization --- or under (d)(1), for cause?

16 And our primary argument that we think presents
17 perhaps the most interesting legal issue pertains to the
18 question of whether these funds represent property of the
19 estate so that this Court should or could assert jurisdiction
20 over those funds. We think the rules are clear, and we've
21 put that in the brief, that in this situation, as odd as it
22 may seem, because the funds are in the hands of another court,
23 they constitute a res which not property of the debtor, the
24 debtor may have a claim to it; but it's not property that
25 belongs to the debtor yet.

1 What the cases say is once the debtor's claim is
2 established, if it may be, in those funds, would go to the
3 Bankruptcy Court for administration, but as it stands --

4 THE COURT: How would the debtor's -- how would the
5 debtor's rights be protected in the Texas litigation?

6 MR. LeBAS: The debtor would -- has been named as a
7 party, and the debtor could appear and assert what interest it
8 may have.

9 THE COURT: So the Trustee's going to have to go to
10 Texas to participate?

11 MR. LeBAS: I think so, yes. I would -- and
12 that's -- and the question of relative balance of whether
13 that's more efficient to do in one place or another, I think
14 that would be addressed in the sense of a (d)(1) analysis:
15 that is, what's the cause? There are some factors that the
16 Courts have looked at, not -- not hard and fast rules as in
17 the interpleader or the (d)(2) issue, but think that's where
18 that issue would arise.

19 We have had --

20 THE COURT: Well, there's -- go ahead.

21 MR. LeBAS: Yes.

22 THE COURT: I'm sorry. Go ahead.

23 MR. LeBAS: The -- I'd speak for a minute to the --
24 my understanding of what the opposition of this question of
25 whether this is property of the estate or not had been.

1 There have been a couple of cases that have been presented to
2 the Court in opposition. One of those is a Sixth Circuit
3 case. The other is the **New Colorado** case. The Sixth Circuit
4 opinion appears to us to be one in which the debtor was --
5 actually owned the property or had title to it up front,
6 similar to the **Grogg** case, which is an Indiana case, or a
7 Seventh Circuit case, I should say; and to me, that does make
8 sense, that is, if the debtor has ownership of the property
9 either by statutory *fiat* as in the **Grogg** case or in the other
10 case because it owned the property anyway, then that, to me,
11 would certainly constitute a reason for property of the estate
12 taking control over the interpleader action.

13 In the **New Colorado** case, there was an interpleader
14 filed. After the interpleader was resolved, that left claims
15 against the bankrupt party. The bankrupt party wanted those
16 claims to be maintained in the original case where the
17 interpleader was filed, and the Court refused to do that,
18 which would be proper. It wasn't an interpleader case at
19 all.

20 So we think the governing rule is, the interpleader
21 cases make the decision as to whether the -- who -- who is the
22 owner of the property. Once that is determined, if it turns
23 out that the debtor is an owner, then the property that the
24 debtor is entitled to receive goes to the Trustee or to the
25 estate for administration.

1 The -- and I would ask if the other parties have
2 something to add to what I've said; and if not here, then
3 perhaps some of the parties who are in support of our motion
4 might want to speak to that by telephone.

5 THE COURT: All right. I would remind those that
6 are on the phone to keep your phones on mute, unless you are
7 speaking. There has been an invitation now for any party that
8 wishes to speak in support of the motion, to do so. Again, I
9 remind you to identify yourself for the record.

10 MR. LOVELL: John Lovell on behalf of Cactus
11 Growers. Your Honor, in regard to your question about the
12 Trustee having to go to Texas, that -- Mr. LeBas's statement
13 is correct, although I would point out that with Fifth Third's
14 lien apparently perfected and in place, the practical reality
15 is that it's going to be Fifth Third competing and litigating
16 to try to establish their lien claim on that -- on those
17 funds; and, of course, to do that they're going to have to
18 establish the ownership of Eastern Livestock to those funds.

19 So in this case, as a practical matter, we don't
20 believe it's going to be that much of a burden on the Trustee
21 because the Trustee is not going to be the actual ultimate
22 party in interest. It's going to be Fifth Third. Fifth Third
23 already -- they have appeared, and they have local counsel,
24 John Ben Blanchard. They're in Amarillo. So as a practical
25 matter, we don't think that'll actually impair or burden the

1 Trustee.

2 MR. LaTOUR: Your Honor, this is Randall LaTour
3 representing Fifth Third. May I respond to that observation?

4 THE COURT: You may.

5 MR. LaTOUR: First of all, the movant's counsel has
6 already admitted that the debtor has a claim against the fund,
7 which makes it cash collateral under 363, which makes it
8 property of the estate under 541.

9 Second of all, it is a burden on Fifth Third to go
10 litigate in that case and potentially have a contrary result
11 in other similar cases that are being considered by this Court
12 here. The situation really cries out for one tribunal to
13 hear all the cases and apply one standard to each of them.

14 And so I would join the objection of the Trustee and
15 -- and refute the observations that the fund doesn't have an
16 issue there, and two, that it's not inconvenient for anybody.

17 THE COURT: Well, expand upon that a little bit.
18 I know that the Trustee in its -- in his brief talked about
19 the possibility of inconsistent rulings. Tell me more how
20 that might happen and how you see that to be a problem.

21 MR. LaTOUR: Well, Your Honor, one of the key
22 issues of this case is going to be the identification of
23 collateral, and there is the possibility that one court could
24 decide that a herd belongs to Party A, and a different court
25 decides that that same herd belongs to Party B.

1 THE COURT: Well --

2 MR. LaTOUR: The way to avoid that risk is to have
3 one court to make the determinations as to everybody.

4 THE COURT: Well, I guess that's -- that's still
5 where I get confused. Why would I be making a determination
6 about this herd if that herd is in Texas, and that court there
7 is adjudicating that issue? How does that come before me
8 then for an inconsistent or consistent adjudication?

9 MR. LaTOUR: Well, for example, Your Honor, part of
10 the claim will be to -- of the estate will be dependent upon
11 the nature of the contract rights that are involved. That's a
12 situation that has not been developed by evidence at this
13 point. The Trustee is still trying to do what amounts to
14 forensic accounting to reconstruct the transaction.

15 Second of all, Your Honor, the East West Trucking
16 case, you have a trucking company that owns cattle; and in the
17 Eastern case you have a cattle company that doesn't have as
18 much cows as it's supposed to have. So you have the
19 possibility that as between the bankruptcy estates that exist,
20 there may need to be a re-alignment of property of the estate,
21 and then an assessment of who has what lien and what the
22 priorities are. If you start having piecemeal determinations
23 by interpleader actions in various state courts, you may have
24 a situation where the holdings are inconsistent to the point
25 that you can't resolve them.

1 THE COURT: And what about -- that's -- that is a
2 point that has been raised also, and that is that we have the
3 other bankruptcy case pending here, and there might be
4 allegations that property has -- or title or property has
5 passed between one debtor to another, with competing claims,
6 depending upon who you're a creditor of -- which entity you're
7 a creditor of.

8 Isn't that -- couldn't that be confused if we go to
9 Texas and -- and get a ruling strictly as to the rights of
10 Eastern, but not determining whether East West has any role in
11 this?

12 MS. CARUSO: Your Honor, Debbie Caruso. Don't
13 forget about the Gibson estate also.

14 THE COURT: And the Gibson estate, which is the
15 individual estate also, yes.

16 MS. CARUSO: Correct.

17 MR. LeBAS: And I'm not sure what particular cattle
18 they're referring to. We have about -- we counted it this
19 morning -- approximately 7,800 to 8,000 cattle that are
20 represented by proceeds in the interpleader case. The
21 ultimate disposition of those cattle now is up to the owners
22 who have acquired possession and delivery and now title to
23 them.

24 With respect to claims to the funds that may be
25 made, if one of the claimants believes that their cattle were

1 sold to Eastern and then sold to one of the feed yards, or
2 perhaps misdirected, misnamed, or otherwise improperly
3 described so that they flowed this way, then they need to go
4 to that place and make the assertion with respect to that
5 fund. I don't see how you would end up with a different
6 result somewhere, because the party who is making the claim is
7 going to have an obligation to track through where their
8 cattle is; and if they can't prove their cattle went to the
9 Texas case as opposed to some other case, they won't get
10 recovery.

11 THE COURT: Well, now isn't there also -- aren't
12 there also interpleader cases in other states?

13 MS. HALL: Yes, Your Honor.

14 MR. LeBAS: That's correct.

15 MS. HALL: Terry Hall for the Trustee. That's
16 the -- probably the over-arching issue here is that we're at
17 the very beginning of this case -- it's a Chapter 11 case.
18 There are currently, as we know, four interpleaders that have
19 been filed in Wisconsin, Colorado, Texas, and Kansas. All of
20 them have received Notice of Bankruptcy.

21 There are other, as put in our motions that will be
22 heard later on in the docket, people that are contacting the
23 Trustee and earlier the Receiver saying, "We've got cattle
24 proceeds as well, but we're concerned about conflicting
25 claims," and that's one of the reasons why we put on our

1 motions, to provide them with a forum to deliver those
2 proceeds.

3 Under the movant's theory, we should just tell those
4 people to go file an interpleader, and then the Trustee will
5 run all over the country adjudicating those claims.

6 The other issue is, a lot of cattle, money, and
7 contracts have disappeared, based on what the debtor's books
8 and records says it should have. And we are at the beginning
9 of trying to find those and determine those relationships.
10 Some of the claimants that are named in the Texas interpleader
11 are, (a), the petitioning creditors who started this case, so
12 I don't think it's quite right that everybody's happy to be in
13 Texas adjudicating over there.

14 The other thing is that a couple of the claimants
15 are related entities, including Gibson Cattle Company. This
16 debtor, we're just beginning to realize, had a lot of
17 affiliated companies --

18 THE COURT: (Sneezed) Excuse me.

19 MS. HALL: -- a lot of inter-related relationships.
20 The branches that the debtor worked through, the branch
21 managers themselves, in addition to working with Eastern's
22 cattle, were selling and buying cattle on their own accounts.
23 The possibility that there could be an adjudication in the
24 Texas case that is ultimately undone due to a fraudulent
25 transfer or a bankruptcy action that should be brought in this

1 Court, does subject the debtor to differing judgments and is a
2 -- it just -- it seems to be inconsistent with the purpose of
3 why the creditors originally started this case, and why this
4 Court appointed a Trustee, which was to provide a forum in
5 this case and in the two related cases in order to bring all
6 those -- all that information together, we can adjudicate all
7 the claims.

8 This Chapter 11 case is not taking away anybody's
9 right to assert any lien they want to include or assert,
10 including the Agister's liens or liens that are possessory.
11 Simply -- and in addition, the Trustee is in the process of
12 either having these cases removed, dismissed, or transferred
13 here to the Chapter 11 case, which is the proper forum to do
14 it.

15 The other -- one thing that we also need to keep in
16 mind is that both the USDA and the FBI are investigating the
17 operations of these debtors. It would be difficult, not only
18 for the Trustee to travel all over the country and litigate in
19 all of these different forums -- that would be inefficient;
20 but this Chapter 11 case will also provide a single place for
21 the accumulation of all of the information, and the debtor's
22 books and records fill two full floors of the building that we
23 just got six months to stay in for free.

24 So that all of those records, and the Court's powers
25 here under the 2004 rules will allow us to get a final

1 resolution in some -- one way or the other -- of all of the
2 claims, protecting all of the parties who have a claim to that
3 money, and --

4 THE COURT: How -- how would the -- these
5 particular creditors -- this -- the parties to the
6 interpleader action in Texas -- how -- how do you foresee
7 their rights being protected here, and how would -- or how
8 would those be adjudicated? In what context do you see those
9 being resolved if the matter remains in Bankruptcy Court?

10 MS. HALL: Well, it could be resolved in two or
11 three ways, depending on which way is the most efficient that
12 the Court wants to proceed in. We have proposed a claims
13 process that the Court is used to. I know that there's forty
14 claimants or forty-seven claims I believe over there now, but
15 this Court is used to adjudicating cases with 5,000 claims.

16 So we have proposed a bar date where people would
17 assert those claims, provide the information; that bar date is
18 very soon. We would hopefully resolve that -- those issues
19 and those claims against the funds -- at least those funds
20 that are interpled, fairly quickly -- probably more quickly
21 than in the interpleader action.

22 We could also transfer the whole case over here and
23 proceed in an adversary proceeding.

24 THE COURT: What about the point that even if there
25 is property identified -- or some of these proceeds are

1 identified to be property of the debtor, that it's liened --
2 that it's blanketed by Fifth Third and there's really no
3 benefit to the estate here. It's really a fight between Fifth
4 Third and competing claims?

5 MS. HALL: Well, I think that's somewhat of a false
6 analogy, Your Honor. They are analogizing or comparing Fifth
7 Third's entire claim to one receivable. That's not the entire
8 case. There are interpled funds in the other cases. There
9 are also, the debtor believes -- the Trustee believes a lot of
10 fraudulent transfers that occurred, a lot of sales in which
11 the Trustee has not been -- the debtor didn't get paid. So
12 it's --

13 THE COURT: So you're saying -- you're telling me
14 you're not really in a position to evaluate the extent of
15 Fifth Third's claim *vis-à-vis* the assets available to satisfy
16 that claim?

17 MS. HALL: Yes, Your Honor. I believe it's way
18 too early in this case to determine there's no equity or no
19 payments to unsecured creditors. If the Trustee truly
20 believed that, we wouldn't be here.

21 MR. LeBAS: Your Honor, the proof that we would
22 submit today is -- is that we have discrete sets of cattle
23 which were purchased by the -- by the movants; that they were
24 paid for in the way I've already said; that Eastern
25 identified, or the persons who were named as claimants said

1 that Eastern had given them bad checks, or Eastern didn't pay
2 for some set of cattle. So we're able to say it's these 248
3 head that came in on October the 15th, 2009 that are the
4 subject of the case.

5 THE COURT: Well, now let me ask you this then:

6 MR. LeBAS: Okay.

7 THE COURT: Has the Trustee been provided with that
8 information?

9 MR. LeBAS: Yes, sir. That information is set out
10 in our pleadings in the state court case.

11 THE COURT: I mean, have you all sat down and
12 talked, other than through pleadings, and said, "Look, there's
13 really no dispute about this batch, because here's the
14 paperwork and the paper trail pertaining to this batch." Have
15 those sort of negotiations taken place and you're all at a
16 loggerhead? Or have we just not had those kind of
17 negotiations?

18 MR. MASSOUH: Your Honor, I have attempted to
19 contact the Trustee on two occasions and have received no
20 response, and specifically e-mailed the Trustee to discuss our
21 particular motion that we're here today on and received no
22 response, and we have not had any discussions with the
23 Trustee.

24 MR. LeBAS: Concerning the question of the (d)(2)
25 motion, the Court's touched on that, maybe is where we -- what

1 do we -- what does the Trustee care? Because this money's not
2 going to go to the unsecureds anyway. Our understanding is
3 that the Trustee's objection says in -- in one of their
4 pleadings that the bank lien is not contested, and I don't
5 understand the remarks today to suggest that maybe it is.

6 THE COURT: I think what she --

7 MR. LeBAS: I understand if --

8 THE COURT: I don't she said it was contested. I
9 think what *she* said is they don't know the full extent of
10 collateral that the bank has to look to.

11 MR. LeBAS: All right.

12 THE COURT: And that there may be fraudulent
13 conveyances of property to weigh that might come back in that
14 would further serve as collateral. Is that what you said?

15 MS. HALL: Yes. Yes, Your Honor.

16 MR. LeBAS: All right, and --

17 MS. HALL: And the other thing is we *don't* have
18 all of the information, and I haven't -- I'm sorry, David. I
19 don't believe *I* was contacted to discuss this, and Mr. Knauer
20 is not --

21 MR. KNAUER: If I have an e-mail from Mr. -- I'm
22 not aware of it, but I won't say I don't have one, Judge.
23 I've gotten, since this case started, I'm such -- a little bit
24 overwhelmed, and I -- but --

25 MS. HALL: The other thing is, these -- these

1 cattle were not necessarily just sold once. If you read
2 through the pleadings, they were sold three, four, five, six,
3 or seven times. So the fact that they -- you know, there's
4 been one final sale that transferred out, it may be in that
5 third situation or something, where we need to do an
6 investigation.

7 MR. LeBAS: To the extent that there may be
8 recoveries for the estate for the fraudulent transfer actions
9 or later readjustments, that really doesn't -- that's not what
10 we're here to decide today, that is, on our motion the
11 question is, is there a showing of no equity? Is there a
12 showing of necessary reorganization?

13 THE COURT: Well, obviously it's not necessary for
14 reorganization, because there's not going to be a
15 reorganization.

16 MR. LeBAS: Right.

17 THE COURT: The equity is the question, and how are
18 you going to put -- I mean, to show me that there's no equity,
19 you can't just show me the value of what you have. You have
20 to show me the whole picture as to Fifth Third's collateral
21 base and their debt, right?

22 MR. LeBAS: My understanding is that what we have
23 to show is that the claims against the interpled fund are in
24 excess of those which the debtor might assert. And that what
25 we've got today is a claim from the bank --

1 THE COURT: Why do you think that's all you have to
2 show? I mean --

3 MR. LeBAS: The statute -- that's my reading of the
4 statute.

5 THE COURT: Oh.

6 MR. LeBAS: No equity --

7 MR. LaTOUR: Your Honor, this is Randall LaTour.
8 May I speak to this issue?

9 THE COURT: Yes.

10 MR. LaTOUR: The issue here is not one of equity
11 and relief from stay, because those issues go to the merits.
12 The motion today is a procedural one, which is what tribunal
13 should be the decider of this issue? And everybody keeps
14 admitting that the debtor has a claim to these funds -- not
15 necessarily the first claim, but a claim. That makes it cash
16 collateral under 363. That makes it property of the
17 bankruptcy estate, and that puts the issue in *this* Court.

18 To -- to say that a motion for relief from stay to
19 have an interpleader action is converted into a motion for
20 relief from stay is to complain two separate issues.

21 MR. LeBAS: Your Honor, that makes perfect sense,
22 except it's not the Rule. I'd read here from the **Rouse** case
23 that we've cited, I hold that because the purpose of the
24 interpleader is to determine title to the *res*. The *res* is not
25 at this point property of the debtor within the meaning of the

1 automatic stay provision.

2 MR. CLEMENT: Your Honor, could I address the
3 interpleader actions (unclear, someone coughing directly into
4 microphones)

5 THE COURT: Yes.

6 MR. CLEMENT: (unclear)

7 THE COURT: You may.

8 MR. CLEMENT: The cases that the movants cite are
9 basically cases where it's been held that the nature of the
10 action was though the debtor was proceeding to establish a
11 claim to a fund so that the purpose of the Court in the
12 interpleader action would be determining whether the debtor
13 has an interest in those funds.

14 As our objection points out, that isn't really the
15 case here. Rather, if you read the pleadings in the
16 underlying interpleader action, there's no dispute that cattle
17 were sold, and the debtors owed this money. That money is
18 property of the estate. Rather, the purpose of the
19 interpleader action is to determine whether other parties can
20 assert a claim. They claim that they sold cattle, or that
21 the debtor failed to deliver cattle, and they have a claim
22 that they're seeking to set off against the estate's money.
23 They also joined a number of parties as defendants in those --
24 in the interpleader action, without describing what their
25 interest is.

1 As originally filed, it appeared that one result in
2 the Texas action might be that monies would go to unsecured
3 creditors of this estate. Once they raised the argument that
4 an interpleader action isn't staying -- and I took a closer
5 look at the pleadings, if you look at one exhibit you'll
6 notice that perhaps these are reclamation claims that are
7 being asserted. But again, that's a claim against property
8 of the estate, proceeds from cattle.

9 This isn't a case where it's -- a state court's
10 going to determine whether the estate has an interest in the
11 first instance. We're clearly owed -- the estate's clearly
12 owed the money. The Court is only determining whether someone
13 else has a claim to those monies. That's a function of
14 Bankruptcy Courts to determine, not some court in Texas or a
15 state court in Kansas or Wisconsin.

16 MR. LeBAS: It -- I think that goes to the same
17 point just raised, and that is, is it property of the estate
18 or is it not? Cases that we've cited support the proposition
19 and flat say that funds that are in the Registry of another
20 Court, pursuant to the federal interpleader statute, to which
21 there are contests, including contests asserted by debtors in
22 bankruptcy, don't constitute property of the estate. Why?
23 Because the property interest of the debtor has not been
24 established. The prior litigation has already been
25 established. That will determine whether it is property of

1 the estate or not.

2 Once that decision is made, the property -- and if
3 it is in favor of the debtor's position, then that fund or
4 those properties go back to the bankruptcy for administration.

5 MS. HALL: Your Honor --

6 MR. MASSOUH: Real quick, Your Honor, on behalf of
7 Friona, Friona was the one that initiated the Texas
8 interpleader action, and because of that we have -- we have
9 gotten in several answers already to our complaint; and
10 without fail, almost all the answers have asserted
11 counterclaims as against Friona, claiming that, you know, that
12 the cattle were sold directly to Friona, or some kind of like
13 claim.

14 And so not only is there these various claims to the
15 fund, but there's also these various asserted counterclaims as
16 against the interpleading plaintiffs, and we anticipate those
17 same kind of counterclaims to be filed as against Cactus
18 Growers and J&F Oklahoma Holdings, so there's more to it than
19 just a simple -- simple claim to the fund. And we have -- in
20 the exhibit notebook, we've kind of outlined in Tab 5 the
21 number of claimants who have filed an answer and filed a
22 counterclaim as against Friona.

23 MS. HALL: Your Honor, if I could, just briefly.
24 Under this theory, the best thing that somebody could do if
25 they owe money to a debtor is to file an interpleader action

1 and put the funds in the Registry, and thereby, by their own
2 affirmative action, remove property from the estate.

3 That -- that is not the black-letter law, and the
4 movants are quoting sort of black-letter law based on a
5 journal article in *Am.Jur*, and some case law. But as -- I'm
6 sorry, I can't remember the case -- pointed out that those
7 cases don't necessarily -- don't deal primarily when you've
8 got essentially claims against the debtor.

9 If you read the interpleader action, it's a breach
10 of contract, recovery of fees and costs. There are claims
11 asserted by the answerers against Friona and the other count
12 -- and the claimants; but they're also counterclaims against
13 the debtor. I mean, this is an action against the debtor's
14 proceeds. The interpleader action itself specifically says
15 -- and I can't remember which one of them it is -- but that
16 they actually were paying the -- in the process of paying the
17 debtor, and stopped payment on the checks.

18 So this is property of the estate, and if you look
19 at the Sixth Circuit case, the only -- the case that they say
20 is in the Seventh Circuit is an Illinois case. It's not
21 actually a Circuit case, and it simply lists the case law. It
22 doesn't adopt it or unadopt it, one way or the other. And it
23 lists the case law that talks about insurance interpleaders,
24 and it lists the case law from the Sixth Circuit.

25 The Sixth Circuit case specifically says that,

1 "When plaintiff, NLT, instead paid the sums due into
2 the Registry of the District Court, the Clerk of
3 that Court became the custodian of that property and
4 was charged to hold it until the Court properly
5 directed how to dispose of it. In that sense, the
6 Clerk was acting much like a Trustee in bankruptcy.
7 Thus, under our interpretation of ***United States vs.***
8 ***Whiting Pools, Incorporated*** -- "

9 -- which is the U.S. Supreme Court case --

10 " -- and the relevant statutes. Once the bankruptcy
11 had intervened, the Clerk of the Court had a duty as
12 a custodian to deliver those funds as property of
13 the debtor to the Trustee in bankruptcy for
14 disposition."

15 It is not black-letter law that you can remove property from
16 the estate by interpleading it. The debtor has claims to
17 that -- those proceeds. Those proceeds were supposed to be
18 given to the debtor. Others may have claims to those
19 proceeds, and that's the purpose of the Chapter 11 case.

20 A couple of other points. Some of the petitioning
21 creditors who started the involuntary bankruptcy here are the
22 very parties who were -- who were sued in the interpleader.
23 So it's -- it is true that a lot of people perhaps want to
24 stay in Texas, but not everybody.

25 The other thing is, it is not true that most -- the

1 majority of the plaintiffs in Texas are in Texas. About a
2 third of them are in Texas and Oklahoma. The rest are in
3 Florida, Kentucky, Indiana, Illinois, Georgia, Missouri. It's
4 -- it's not all of just Texas over there.

5 So from a convenience point of view, from a single
6 jurisdiction, from "Let's bring it all here and get it all
7 done," as far as an efficiency point of view, the Chapter 11
8 case is recognized as the proper forum to adjudicate all of
9 those competing claims.

10 THE COURT: All right. I'm not going to lift the
11 stay today, for a number of reasons. One of the -- that's
12 not to say that I might not lift the stay at some point and
13 allow various litigations to occur in other jurisdictions. I
14 think it's too soon. I think the competing claims are too
15 ambiguous at this time. I think that there needs to be the
16 kind of discussion, whether it's informal (sic) or informal
17 discovery that occurs, exchange of information.

18 The -- there is an overriding policy to -- and in
19 support of judicial economy to bring claims together in
20 Chapter 11. It's in the first chapter of the Chapter 11
21 textbook that I use when I teach a seminar; and when -- this
22 is a perfect example of when you have litigation in various
23 states, it makes a lot of sense to bring them into one forum.

24 Having said that, I have on many occasions lifted
25 the stay to allow discrete -- claims against discrete

1 properties or, for example, to proceed against an insurance
2 policy or that sort of thing, and said that's best handled by
3 a state court.

4 This fits somewhere in the middle. I looked at the
5 cases that you've both cited concerning whether or not this is
6 property of the estate. Obviously there's some disagreement
7 here, but I do think at least it's property that the estate
8 has a claim on, and I think at this point of the case I don't
9 see any great prejudice in -- in -- to the claimants, to the
10 Texas claimant remaining here at least for awhile.

11 The -- it may be that after further investigation
12 the Trustee determines they have no interest in these funds.
13 Then they may come to agree with your position; but I'm not
14 going to -- this soon into the case, and less than a few weeks
15 of having a Trustee in place, I think that's premature at this
16 time.

17 Now what I can do so that you don't have to refile
18 your motion and would like an evidentiary hearing on it at a
19 later date, I can just deny it preliminarily and set a final
20 hearing date at a later time. Now that has to be held within
21 thirty days, unless the parties waive.

22 Let me say this, though. I don't think there's a
23 lot of evidence as to the first portion of the motion, and
24 that is, where should we hear it? I mean, that's -- that's a
25 policy question.

1 The other side -- the other thing is, if it's going
2 to be treated as more of a traditional motion for relief, and
3 that is there's no equity, there's -- under (d)(1) or (d)(2),
4 if we're going to hear it like that, then that's obviously an
5 evidentiary question, I would think that's the question that
6 the parties need to exchange information about, and as I said
7 earlier, conduct discovery either formally or informally.

8 Would you all like a date --

9 CONFERENCE TELEPHONE OPERATOR: Joining the
10 meeting.

11 THE COURT: I'm going to -- I'm going to set some
12 omnibus dates here. I'm thinking about the 11th of February
13 and the 11th of March as two possible omnibus dates. Both of
14 those are Fridays.

15 (Pause)

16 MS. HALL: Your Honor, you sort of -- this is Terry
17 Hall. You sort of threw out the idea unless the parties waive
18 the thirty days, and the Trustee will need to devote a
19 tremendous amount of efforts to this one area of the case if
20 that thirty days is not waived. Hearing nothing from the
21 other side, are you willing to waive the thirty days' final
22 hearing?

23 MR. LeBAS: I think we need to get a date certain so
24 that we understand what we're dealing with. We've got a
25 lawsuit that we need to either pursue or not pursue, with

1 claims that being asserting both internally -- that is, for
2 example, the cross-claims that Mr. Massouh has described. We
3 don't want those to just sit there open-ended.

4 So I would say that to the extent the Court can give
5 us a date, if it --

6 THE COURT: Well, let me -- let me say this:

7 MR. LeBAS: -- certainly, after thirty days, I
8 wouldn't see a problem with that.

9 THE COURT: Give you -- I'm sorry. I interrupted
10 you, and I didn't hear the last part of your sentence.

11 MR. LeBAS: Yes. I would say that if it's a
12 reasonable time, if it's -- if it's not thirty, but it's
13 forty, for example, or something--

14 THE COURT: Right.

15 MR. LeBAS: -- I wouldn't see a problem with that.

16 THE COURT: Well, are -- isn't it true that --
17 number one, isn't it true that the information that you're --
18 you can be obtaining here with -- through an exchange of
19 information with the Trustee is the same information you'd be
20 trying to get if you were back in Texas doing discovery,
21 number one? So -- and number two, is it -- it might well be
22 possible that I could make a -- sign an order that made it
23 clear that the stay was *not* in place as to competing claims
24 among third parties?

25 MR. LeBAS: Our concern --

1 THE COURT: As far as discovery.

2 MR. LeBAS: Our concern about the third-party
3 claims is two-fold, and one is how do we process those? The
4 second would be, as a defense to the interpleader itself,
5 claimants have access to the funds to defend themselves. We
6 don't want to see that fund dissipate --

7 THE COURT: That's a good point.

8 MR. LeBAS: -- go into the Trustee's hands, and now
9 we've got no shot to defend ourselves with that fund. That's
10 part of the reason for filing the interpleader.

11 THE COURT: Okay.

12 MR. LeBAS: The -- I've --if the Court -- and that
13 was one of the problems that we were discussing off-line, if
14 you will; that is, with the Court's ruling today I think it's
15 more of a continuance, we have evidence we can present, but as
16 I understand the Court's thought process now, you don't want
17 to hear the evidence, you're -- and so a ruling that you would
18 make would not be evidentiary in the sense it held against
19 either party for not having put evidence on to support its
20 position.

21 THE COURT: That's correct.

22 MR. LeBAS: Have I got that right?

23 THE COURT: That's correct.

24 MR. LeBAS: And I would say -- suggest that perhaps
25 -- that does the Court have a date that you would like us to

1 (unclear).

2 THE COURT: Well, do you want to present evidence
3 on the -- ? Well, why are you two standing?

4 MS. HALL: Just to irritate you.

5 THE COURT: That's all right. Go ahead. Say
6 something.

7 MR. KNAUER: I wanted to make a comment on the
8 timing issue. Our efforts currently, and probably for most of
9 the next thirty days, are on asset identification, securing
10 assets, locating them, which has proven to be a difficult task
11 because a lot of the records that we need are not there. And
12 while -- I'm not saying we couldn't make some progress on our
13 analysis of the claims because we do have a lot of the
14 information now -- I can't say we don't have it all, but I
15 think we're -- we have a lot, for this case.

16 I could -- don't think we could stand up and say
17 that we could -- we could be prepared to come to court or have
18 our view of how the claims should be resolved, ready in thirty
19 days or even forty days. I -- you know, -- I'm sure sixty is
20 -- is, we'd need that time, because the next thirty days I
21 foresee we're still going to be -- Ms. Lynch and I talked to a
22 Sheriff in one county in Texas yesterday. I talked to four
23 cattle ranchers. She's talked to several feed lots. We're --
24 we're just chasing assets right and left, and resolving claims
25 at this point, this next thirty days, is almost impossible for

1 us.

2 Whether we were in the interpleader or -- we'd be
3 saying the same thing if we were in Texas. It would -- the
4 story wouldn't change.

5 THE COURT: All right, let's do this: I mean,
6 there are two questions here. I keep coming back in my own
7 mind the fact that there are two separate issues here. First
8 of all, does this need to be heard in the Bankruptcy Court?
9 And in my mind, as I think I've indicated by several of my
10 questions and comments, the answer to that is going to be
11 fact-sensitive. And that is, as I said earlier, do we have a
12 discrete asset here that is going to ultimately be of no value
13 to the estate, that's liened up over its value, that some
14 parties want to go to Texas and fight about who gets it?

15 If that's the case, I'd say, "Let them go to Texas
16 and fight about who gets it." You know, if this -- I'm only
17 interested in what -- in it if it is, in fact, an asset or
18 potential asset of this estate. And whether or not there's
19 prejudice to any party, a claimant in this Court, by having to
20 fight in different courts and litigate in different
21 jurisdictions -- and, of course, there is the concept or the
22 concern of inconsistent adjudications also.

23 So those are the thoughts that are going through my
24 mind on the forum question. I was hopeful, and the reason I
25 asked the question, you know, "Have you all really had a sit-

1 down and exchanged information?" And I was hopeful that maybe
2 some of that might go a way to res -- to the Trustee coming to
3 the conclusion he doesn't care. I don't know if he will ever
4 get to that point, and I'm not prejudging that. But it
5 happens a lot in other cases.

6 So let's do this: Let's -- let's continue this
7 hearing until March 11th. That's a Friday. I'll give you a
8 9:30 a.m. hearing time. I want a -- I want to pre-try it on
9 February 11th, thirty days from today. And I understand that
10 the Trustee is burdened with a lot of responsibilities and has
11 been thrown into the deep end of the pool here; but I do think
12 at least that it's -- there should be time in this next thirty
13 days to at least have a meaningful discussion and to ship off
14 some documents to one side or the other, and maybe even in a
15 face-to-face conference. And I'm going to -- or it could be
16 telephonic since you all are so far apart. I'm not going to
17 insist upon anybody travel for that.

18 But let's have at least one meaningful conference
19 between now and then and exchange of some documents. We'll
20 pre-try it on the 11th, which is going to be an omnibus date
21 in this case. So if it's -- the only thing that you all are
22 involved in that day is a pre-trial, you can participate
23 telephonically.

24 The final hearing will be set on the 11th of March.
25 The only -- and I want to talk to you on the 11th of February

1 -- when I talk to you about -- to make -- I may make a
2 decision that day as to whether it's going to stay here, or
3 whether I'm still entertaining the thought of sending it back.

4 If it's going to stay here, then I get back to the
5 question I asked Ms. Hall earlier: How are we going to
6 resolve it? Are we going to do it through the claims
7 process? Are we going to do it through an adversary? Are we
8 going to remove? I don't think you can remove that action.
9 But we would need to discuss those specifics at that time.

10 Okay? Any further questions on that motion? Comments?

11 MR. LaTOUR: The March 11th hearing is in New
12 Albany?

13 THE COURT: Everything is in New Albany, unless
14 otherwise indicated.

15 MR. LeBAS: And will the pre-trial on February
16 11th, will that be at 9:30?

17 THE COURT: 10:30.

18 MR. HUFFAKER: Your Honor, John Huffaker for
19 Friona. One other point of clarification. The Court has
20 expressed this issue of are these discrete assets or not? And
21 certainly the documents that we'll be producing to the Trustee
22 we believe will absolutely demonstrate that.

23 Now whether, when we come to February 11th and the
24 Court is trying to grapple with that decision, we'd probably
25 need some clarification about the extent to which that is or

1 is not evidentiary.

2 THE COURT: It's not going to be evidentiary.

3 MR. HUFFAKER: And we might need some help from
4 them in terms of cooperating of what is (unclear)

5 THE COURT: If you've convinced them, and they tell
6 me that they agree, then you've got me.

7 MR. HUFFAKER: Right. But what I'm saying is if we
8 come to February 11th, and you're attempting to decide, and we
9 have no agreement, then it seems to me like the Court's going
10 to have to hear some evidence some way.

11 THE COURT: I'm not going to hear evidence on the
12 11th. If I do have to hear evidence on that question -- and
13 we'll -- I mean, the word that keeps going through my mind
14 here -- and I've tried to avoid saying it -- is "bifurcate."
15 But at some point we might need to talk about bifurcating this
16 issue because there really are two separate issues: Where
17 should we hear this? And then there's the hearing on the
18 merits, you know, on the relief from stay merits, under --
19 under the Code Section. So you -- we'll talk about that at
20 that point, but I don't want anybody -- we're not -- we're
21 going to try to be clear, the fact that at least on this issue
22 there won't be evidence on the 11th of February.

23 MR. LeBAS: Your Honor, I --

24 THE COURT: Yes.

25 MR. LeBAS: -- a further point of clarification,

1 and that deals with this anticipation that the Court may rule
2 that it wants to move to the next step, that is, a (d)(1) and
3 (d)(2) analysis; and particularly on the (d)(2) issue with
4 respect to is there equity, how do we find out what the status
5 of the bank claim is, how big it is, how much money they've
6 got in the account, what other collateral they may have --

7 THE COURT: Well, see, that's my whole--

8 MR. LeBAS: -- if there's an argument, and so --

9 THE COURT: That's my question, too.

10 MR. LeBAS: Well, but -- but --can we start -- do
11 we have access to the discovery process that would otherwise
12 be available if this were an adversary, for example, to
13 prepare for that particular dispute, if it comes up?

14 ATTORNEY: (unclear) contested motion.

15 MR. LeBAS: We've got a -- we've got an interim
16 time period here. I hate to see it run to waste. Would the
17 Court permit limited access to some discovery on questions
18 that might pertain to the (d)(1) or (d)(2) motions?

19 THE COURT: Well --

20 MR. LaTOUR: Your Honor, this is Randall LaTour for
21 Fifth Third Bank, if I could make a suggestion, I would have
22 Fifth Third Bank file a proof of claim that has the
23 documentation available for the creation, attachment, or
24 perfection of the secured interests, which I think is the
25 information that was requested. I don't want to have some

1 kind of a discovery window where we spend time figuring out if
2 we're in compliance or not.

3 MR. LeBAS: Yeah. Assuming it had the debt in
4 documentation, supporting it, I think that would be
5 satisfactory for the Court to take notice of, what the claim
6 is, and what the status of these items are, their value
7 compared to the debt.

8 THE COURT: All right. Now what about my
9 suggestion earlier that do you all want any order that allows
10 anything to proceed as far as these third-party disputes that
11 you have in Texas? To make clear that the stay -- I don't
12 think the stay -- they're stayed anyway.

13 MS. HALL: Well, the District Court in Texas issued
14 -- when we filed the Notice of Bankruptcy, they stayed the
15 entire case.

16 THE COURT: Okay. Do you want anything indicating
17 that you can start discovery as to those third parties?

18 MR. LeBAS: Not at the present time, Your Honor. I
19 think it would be confusing to everybody as to whether we're
20 in or out.

21 THE COURT: Okay. All right. Anything else on
22 this motion? All right, let's move on.

23 Ms. Hall, you've got two motions. One has to do
24 regarding payments of the sales.

25 MS. HALL: Yes, Your Honor. We have two motions

1 on, and they're sort of complementary to the motion that you
2 heard last week relating to the contracts, and this is simply
3 to give the Trustee what could be ordinary course authority,
4 but in order to allow the Trustee to properly administer the
5 assets of the estate.

6 We have people who have -- we have sold cattle to
7 who are concerned about providing the money payments to us
8 because they're concerned about conflicting claims, and they
9 *didn't* file an interpleader. And so we'd ask for authority
10 for the Trustee to accept those proceeds and provide a limited
11 indemnification to those parties that give us those proceeds,
12 up to the amount of the proceeds that they give us, from
13 conflicting claims.

14 It also sets up a mechanism for people to file
15 claims, so that we would have a bar date for people to file
16 claims. They'd file all their documentation. That bar date I
17 believe is proposed to be March 31st. We'd advertise it in
18 all of the various and sundry forums that's in the cattle
19 industry and that Eastern provided in, and that would give us
20 an early indication and give us a lot more information, and it
21 would give people -- the parties that are involved -- some
22 certainty about giving the money into the estate; and also,
23 the estate's ability to start adjudicating all of those claims
24 quickly. We have six months' free rent, and we intend to --
25 to get this case moving.

1 The second motion is, we do have cattle that are
2 still in our inventory that need to be sold, and we want to
3 continue to -- we want to be able to sell those cattle.

4 There is a misstatement in that pleading. It's not
5 36,000 cattle. That's the number of cattle that were
6 identified in the contracts. It's four to 6,000 cattle that
7 we still need to actually physically get sold.

8 We're probably -- we're just wanting to use the
9 normal mechanisms that are available in the industry. We may
10 be working with one of the primary auction houses that's been
11 providing information to us. And it's -- essentially that's
12 what the motions -- both motions say is to just give the
13 Trustee the ability to start administering the assets of the
14 estate, get the money in, get the cattle out.

15 There have been some -- a couple of objections that
16 have been raised to it, primarily on the basis -- if I
17 understand it correctly -- is that the motions are vague,
18 because we're not exactly sure of which cattle and which
19 proceeds.

20 If the concern is that the Trustee is going to try
21 to undo cattle that have already been sold or gone, that's why
22 we have two motions. If we've identified cattle in the cattle
23 inventory that have already been sold, then we have the
24 proceeds motion to "Please pay us." So if that's a concern,
25 we don't in -- I don't believe -- intend to try to undo sales

1 -- to the extent -- unless it was a fraudulent transfer.

2 The other issue has to do with whether we would, in
3 our sales costs, pay for feed and care of the cattle that
4 occurred pre-petition and post-petition; and on that issue I
5 think we've set -- I think we have to pay for any post-
6 petition amounts of feed that were sold? I'm not exactly sure
7 whether -- but it's something we can talk about as to whether,
8 if you had a properly documented pre-petition feed bill that
9 you need to deduct from those sales proceeds, then we would
10 discuss that.

11 THE COURT: All right.

12 MS. HALL: But I'm talking about their objection.

13 MR. HUFFAKER: Your Honor, John Huffaker for the
14 movants Friona and J&F and Cactus.

15 We filed objections to both of the Trustee's
16 motions. One motion entitled "Emergency Motion Regarding
17 Payments on Debtor's Cattle Sales," and one motion called
18 "Emergency Motion Regarding Trustee Selling Debtor's Current
19 Cattle Inventory."

20 That second one is the one that recited the 36,000
21 head, and our objection really to both of these motions is
22 lack of clarity as to whether the Trustee is attempting to
23 deal with cattle that are already distinctly identified to
24 other contracts and other proceedings.

25 For example, all of the cattle in the Texas

1 interpleader are identifiable cattle, identified in the
2 contracts. Yet I don't hear counsel saying they're trying to
3 somehow back-door gather those into the -- into the Bankruptcy
4 Court, but I'm not sure.

5 THE COURT: I think that would be "corral" them
6 into the --

7 (Laughter)

8 MR. HUFFAKER: Well, we've got them in corrals,
9 Judge.

10 MS. HALL: The small cattle.

11 MR. HUFFAKER: We've got them in pens. So what
12 we're concerned about is some overly unclear order as to what
13 cattle are what, and whether they're trying to --

14 THE COURT: All right, well, let's talk about that.

15 MR. HUFFAKER: -- trying to --

16 THE COURT: So you're not talking about cattle that
17 are in other contracts.

18 MS. HALL: Well --

19 THE COURT: Well, I mean, for example, you're not
20 talking about these cattle that are down in Texas, the
21 proceeds that --

22 ATTORNEY: We're not talking about any of the
23 cattle in the interpleader, if that answers Mr. Huffaker's
24 question.

25 MR. HUFFAKER: That -- that's helpful, Your Honor.

1 And then with respect, so that -- so that feed charges,
2 finance charges, all of that on those cattle will be separate.
3 We won't have to adjudicate that through the Trustee's Office,
4 so to speak. Right?

5 ATTORNEY: That's part of the interpleader.

6 MR. HUFFAKER: Yes, that's right.

7 ATTORNEY: Whatever happens with that interpleader--

8 MR. LeBAS: I would say it's actually not part of
9 the interpleader, because these cattle have been delivered
10 under contract of sale --

11 THE COURT: What -- when you say "these cattle,"
12 which ones do you mean?

13 MR. LeBAS: That give rise to the purchased funds
14 that were in the interpleader case itself.

15 THE COURT: Okay.

16 MR. LeBAS: If we got 100 head over in Pen 426 at
17 Cactus Growers' yard, then those cattle will be fed out to a
18 customer -- perhaps Cactus owns them. Cactus can do whatever
19 it wants to with them. The money representing the purchase
20 price for those cattle, which Eastern may have a claim to, the
21 Trustee, the bank -- we don't know right now -- might have a
22 claim to -- those funds stand for something, and somebody has
23 claims to them. But what happens to those cattle ought to,
24 in our view, go with who is -- who is paid for and who has
25 possession of them, and under who they were delivered.

1 So our concern with the objection is, is the Trustee
2 attempting to assert some measure of control over the feeding,
3 the care, the slaughter, eventually, and disposition of
4 slaughter proceeds from those cattle, we've already taken
5 possession of and paid for.

6 THE COURT: No --

7 MR. HUFFAKER: And that are identified in the
8 contract.

9 THE COURT: And you're not.

10 ATTORNEY: We're not trying to sell cattle that
11 have been paid for.

12 THE COURT: Right. No --

13 ATTORNEY: This motion has to do with cattle that
14 we have not yet sold.

15 MR. HUFFAKER: Well, again, Your Honor --

16 ATTORNEY: They've paid the money to the Court.

17 MR. HUFFAKER: Right. Okay. So if the money's in
18 the Court, you're not going try to (unclear, multiple speakers
19 on the same microphones, can't separate voices)

20 ATTORNEY: We're not trying to sell cattle for
21 which the proceeds have been tendered into court in that
22 interpleader.

23 THE COURT: Well, can we put something in the order
24 that says this -- this does not in any way pertain to the
25 cattle that are the subject matter of the interpleader action

1 in Texas?

2 ATTORNEY: Yes.

3 MS. HALL: But as far as the cattle inventory.

4 The cattle inventory does not -- doesn't have anything to do

5 with the cattle that are identified in the interpleader

6 (unclear)? Is that what you're talking about?

7 ATTORNEY: Right.

8 ATTORNEY: That's correct.

9 MS. HALL: Would that work?

10 THE COURT: Is that --

11 MR. HUFFAKER: I think that would be fine, Your

12 Honor, if we can get some clarification as to --

13 THE COURT: All right, we'll put that language --

14 MR. HUFFAKER: -- what the powers are.

15 THE COURT: -- in the order. Mr. Ames.

16 MR. AMES: Yes, Your Honor. I'm

17 uncharacteristically quiet so far, but the Kentucky

18 Cattlemen's Association as well as other clients are

19 supportive of the motions, and, in fact, that is one of the

20 reasons why the original involuntary was brought, to make sure

21 that there was a certainty as to where the assets were, how

22 they were going to be identified; and we feel the Trustee is

23 going along with that process. And now that, if we can clear

24 up which cattle are being sold, the -- you know, we've talked

25 with Trustee's counsel yesterday and added some language that

1 made us a little more comfortable with the order.

2 The one thing that did get passed us yesterday was
3 the March 31st bar date might be a tad soon. The level of
4 sophistication is not -- not as great as it is in
5 manufacturing types and other types of cases. We would ask
6 that that be extended to give these farmers and various other
7 parties an opportunity to submit and to contact and to become
8 more aware of what's going on.

9 THE COURT: Is April 30th satisfactory?

10 ATTORNEY: That's --

11 MR. AMES: Yes, sir.

12 THE COURT: All right, we'll change it to then.

13 MR. LeBAS: Your Honor, may I go back to issue that
14 was addressed in our earlier motion? And it has to do with
15 the bank's proof of claim filing of its debt? I know that
16 counsel has represented what will be done, but it would be
17 helpful if we could know when so we know what we're dealing
18 with? Might that --

19 THE COURT: When -- when do we anticipate the
20 filing of the Fifth Third proof of claim?

21 MR. LaTOUR: Your Honor, I would propose to have
22 that in place before the February 11th, -- perhaps on the
23 heels of the February 11th pre-trial, with the other
24 information being exchanged.

25 MR. LeBAS: I think we need to know that somewhat

1 in advance of it, because the exchange is if they're going to
2 do that we don't need to do discovery if we get -- we need to
3 know what we're dealing with.

4 THE COURT: Could you have that in -- I don't have
5 -- oh, yes, I do. (Pause) Could we have it -- could we have
6 it the week before February 11th?

7 MR. LaTOUR: (unclear) Your Honor.

8 THE COURT: All right.

9 MR. LeBAS: (unclear)

10 THE COURT: February 4th.

11 MR. LeBAS: Thank you.

12 MR. LaTOUR: (unclear) February 4th.

13 MR. LeBAS: Thank you.

14 THE COURT: All right --

15 MR. HUFFAKER: Your Honor, one other word of
16 clarification on the motion -- the Trustee's motion. It's my
17 understanding, and I just want to make this clear -- that with
18 respect to the order that they're going to enter, it's also
19 not going to try to require payment of the interpled monies--

20 THE COURT: No. --

21 MR. HUFFAKER: -- into the Trustee's account.

22 THE COURT: -- it is not.

23 MR. HUFFAKER: Okay.

24 THE COURT: It is not. We're not at that -- we're
25 not at that point yet. We may never get there. All right.

1 Then -- anybody else want to be heard on those two motions?

2 Those related motions? I'll show --

3 MS. HALL?: Your Honor, could I ask one question?

4 On the ability of -- to pull defense costs from the interpled

5 funds, is that -- is that -- do you do that -- I don't

6 (unclear) do you do that now? Have you done it before? Or

7 do you (unclear)

8 ATTORNEY: Defense costs, like -- ?

9 FEMALE ATTORNEY: Well, you've asked for attorneys'
10 fees and costs.

11 ATTORNEY: Oh.

12 FEMALE ATTORNEY: (unclear)

13 ATTORNEY: No, that'd be a matter of adjudication
14 in the final --

15 FEMALE ATTORNEY: At the end.

16 ATTORNEY: Yeah.

17 FEMALE ATTORNEY: Oh.

18 THE COURT: I think that's one thing you all ought
19 to talk about, too, as part of your negotiations.

20 Okay, then we had a couple parties that joined the
21 motion. I believe those joinders were now restyled as
22 responses to the original motion for relief.

23 And then I believe that brings us to East West
24 Trucking case? I've got a motion to approve agreed order with
25 Cattlemen's Feed Lot.

1 CLERK: That's this afternoon.

2 THE COURT: Oh, that's this afternoon. Well, then
3 we won't do that. I'm glad. If there's nothing else in --
4 well, is East West going to take any time? Is everybody here?

5 MR. HUFFAKER: Your Honor, John Huffaker. We
6 represent Cattlemen's in that motion to lift stay, and
7 basically that is a hearing on 800 and some 44 -- 844 head of
8 cattle that we contend we are the only lienholder on, and we
9 want to sell them in the due ordinary course of business and
10 apply the funds to the existing debt and existing lien.

11 We have evidence for that. I would say that
12 evidence can be put on fairly quickly. I'm not sure it can be
13 put on before the noon hour.

14 MR. CARR: Your Honor, it doesn't -- Your Honor, may
15 it please the Court, John Carr for First Bank. East West's
16 counsel isn't here, and the Trustee is holding 341 meetings.

17 THE COURT: That's fine. That's what I was
18 wondering if everybody was here. Everybody's not here. We'll
19 hear it at 1:30. Anything else in Eastern?

20 CLERK: (unclear)

21 THE COURT: Oh, any parties that are participating
22 by phone, we're using the same dial-in number this afternoon.
23 All right, we're adjourned.

24 [Off the record at 1:52:01 p.m.]

25 (See separate transcript for afternoon hearing)

1 * * * * *

2 I certify that the foregoing is a true and accurate
3 transcript from the digitally sound recorded record of the
4 proceedings.

/s/ Gloria C. Irwin

1/23/2011

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